

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

VICTORIA THOMPSON  
INDIVIDUALLY AND ON BEHALF OF  
DECEDENT RUSSELL GENE  
THOMPSON,

Plaintiff,

v.

UNITED STATES OF AMERICA,  
Defendant.

No. 2:22-cv-01459-JAM-JDP

**ORDER DENYING DEFENDANT UNITED  
STATES OF AMERICA'S MOTION FOR  
SUMMARY JUDGMENT**

This matter is before the Court on Defendant United States of America's ("Defendant") motion for summary judgment under Rule 56(a) of the Federal Rules of Civil Procedure. Def.'s Mot. for Summary Judgment, ECF No. 37. Defendant's motion is based on two grounds: (1) Plaintiff Victoria Thompson, individually and on behalf of decedent Russell Gene Thompson, ("Plaintiff") is judicially estopped from asserting the claims in the Second Amended Complaint ("SAC"); and (2) Plaintiff cannot maintain this action under Rule 17 of the Federal Rules of Civil Procedure because she is not a real party in interest. Def.'s Memorandum of Points and Authorities ("Mot."), ECF No. 37-1 at 1-2. Defendant's motion stems from Plaintiff's nondisclosure of an administrative tort claim filed against the Department of Veteran

1 Affairs ("VA") during the pendency of Plaintiff's earlier  
2 bankruptcy. Id. at 1-2.

3 For the reasons set forth below, the Court DENIES Defendant's  
4 motion for summary judgment on both grounds.<sup>1</sup>

5 I. DEFENDANT'S REQUEST FOR JUDICIAL NOTICE

6 Defendant requests the Court take judicial notice of six  
7 documents in support of its motion under Rule 201 of the Federal  
8 Rules of Evidence. See Def.'s Req. for Judicial Notice ("RJN"),  
9 ECF No. 37-3. The documents consist of Plaintiff's underlying  
10 administrative tort claim filed against the Department of  
11 Veterans Affairs on October 6, 2021 (Exhibit 7) and documents  
12 from Plaintiff's chapter 13 bankruptcy proceeding that are in the  
13 court's records (Exhibits 4-6, 8-10). Id. Plaintiff does not  
14 oppose Defendant's requests. See Opp'n, ECF No. 40.

15 As documents that "can be accurately and readily determined  
16 from sources whose accuracy cannot reasonably be questioned," and  
17 in the absence of Plaintiff's objection, see Opp'n, the Court  
18 takes judicial notice of exhibits four through ten, inclusive, as  
19 requested. See Fed. R. Evid. 201(b); Harris v. Cty. of Orange,  
20 682 F.3d 1126, 1132 (9th Cir. 2012) (documents filed in federal  
21 court are a matter of public record that may be judicially  
22 noticed when undisputed); In re Calder, 907 F.2d 953, 955 n.2  
23 (10th Cir. 1990) (Rule 201 permits judicial notice of the  
24 contents of bankruptcy schedules and statements of financial  
25 affairs but not the truth of those contents); Duke Energy Trading

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26 <sup>1</sup>This motion is determined to be suitable for decision without  
27 oral argument. E.D. Cal. L.R. 230(g). The hearing was  
28 previously scheduled for September 26, 2023, and was vacated by  
this Court on September 19, 2023. ECF No. 42.

1 & Mktg., L.L.C. v. Davis, 267 F.3d 1042, 1048 n.3 (9th Cir. 2001)  
2 (granting requests for judicial notice of documents filed with  
3 California administrative agencies). The Court only takes  
4 judicial notice of the contents, or lack of contents, within the  
5 matters noticed but not the truth of those contents. See In re  
6 Calder, 907 F.2d at 955 n.2; Lee v. City of Los Angeles, 250 F.3d  
7 668, 690 (9th Cir. 2001).

8 II. BACKGROUND AND UNDISPUTED FACTS

9 Russell Gene Thompson ("Decedent") was a patient at (1) the  
10 VA medical facility in Martinez, California from March 19, 2021,  
11 to May 7, 2021, and (2) the VA medical center in San Francisco,  
12 California from August 19, 2021 to October 6, 2021. Pl.'s Resp.  
13 to Def.'s Statement of Undisputed Facts ("SUF") No. 1, ECF No.  
14 40-4. Decedent passed away on October 6, 2021. SUF No. 12. The  
15 same day, Plaintiff, as Decedent's surviving spouse, submitted an  
16 administrative tort claim with the VA to recover damages for the  
17 injuries allegedly sustained in connection with Decedent's care  
18 and treatment at both facilities (the "VA Claim"). SUF Nos. 12,  
19 13.

20 Approximately five years earlier, on June 20, 2016,  
21 Plaintiff and Decedent filed for chapter 13 bankruptcy in the  
22 Bankruptcy Court for the Eastern District of California, Case No.  
23 16-23970. SUF No. 5. Plaintiff and Decedent filed a statement  
24 of financial affairs and schedules of assets with their chapter  
25 13 bankruptcy petition. SUF No. 7. The bankruptcy court  
26 confirmed Plaintiff and Decedent's chapter 13 plan on September  
27 14, 2016. RJN No. 5 at 24. On July 30, 2019, Decedent was  
28 dismissed as a debtor from the bankruptcy case, leaving Plaintiff

1 as the only remaining debtor. SUF No. 14. On March 7, 2022, the  
2 bankruptcy court entered an order of discharge for Plaintiff, SUF  
3 No. 15, and the case was closed on March 22, 2022. RJN No. 5 at  
4 19.

5 Plaintiff and Decedent did not disclose the VA Claim in  
6 their initial bankruptcy filings, and Plaintiff never amended the  
7 filings to disclose the VA claim during the pendency of the  
8 bankruptcy case. SUF Nos. 7, 11, 16.

9 After several pleadings and a consolidation of cases,  
10 Plaintiff filed the operative second amended complaint in this  
11 action on June 28, 2023, individually and as the personal  
12 representative of Decedent's estate, to recover damages for the  
13 injuries allegedly sustained in connection with the care and  
14 treatment Decedent received at both facilities. Second Am.  
15 Compl. ("SAC"), ECF No. 33; SUF Nos. 2-4.<sup>2, 3</sup>

### 16 III. OPINION

#### 17 A. Legal Standard

18 A Court must grant a party's motion for summary judgment  
19 "if the movant shows that there is no genuine dispute as to any  
20 material fact and the movant is entitled to a judgment as a  
21 matter of law." Fed. R. Civ. P. 56(a). The movant bears the  
22 initial burden of "informing the district court of the basis for  
23 its motion, and identifying [the documents] which it believes  
24 demonstrate the absence of a genuine issue of a material fact."

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26 <sup>2</sup> While SUF Nos. 2-4 are disputed, they are neither factual nor  
material. Fed. R. Civ. P. 56(a).

27 <sup>3</sup> Also pending before the Court is Defendant's motion to dismiss  
28 Plaintiff's SAC. Def.'s Mot. to Dismiss, ECF No. 34. That  
motion will be decided by separate Order.

1 Celotex Corp v. Catrett, 477 U.S. 317, 323 (1986). A fact is  
2 material if it "might affect the outcome of the suit under the  
3 governing law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242,  
4 248 (1986). Once the movant makes this initial showing, the  
5 burden rests upon the nonmoving party to "set forth specific  
6 facts showing that there is a genuine issue for trial." Id. An  
7 issue of fact is genuine if "the evidence is such that a  
8 reasonable jury could return a verdict for the nonmoving party."  
9 Id. All reasonable inferences are drawn in favor of the non-  
10 moving party. In re Oracle Corp. Sec. Litig., 627 F.3d 376, 387  
11 (9th Cir. 2010) (citing Anderson, 477 U.S. at 255).

12 B. Analysis

13 1. Defendant fails to show Plaintiff is judicially  
14 estopped.

15 Defendant argues Plaintiff is judicially estopped from  
16 bringing this action because she failed to disclose the VA Claim  
17 during the pendency of her chapter 13 bankruptcy. Mot. at 1-2.

18 The doctrine of judicial estoppel "prevents a party from  
19 prevailing in one phase of a case on an argument and then  
20 relying on a contradictory argument to prevail in another  
21 phase.'" New Hampshire v. Maine, 532 U.S. 742, 749 (2001)  
22 (quoting Pegram v. Herdrich, 530 U.S. 211, 227 n.8 (2000)). The  
23 purpose of the doctrine is to protect the integrity of the  
24 judicial process. Id. at 750.

25 In New Hampshire, the Court identified three factors that  
26 "firmly tip the balance of equities in favor of" estopping a  
27 party: (1) a party's later position is clearly inconsistent with  
28 an earlier position; (2) the earlier court accepted the party's

1 prior position; and (3) the inconsistent positions would give  
2 the party an unfair advantage or unfairly disadvantage an  
3 opposing party. Id. at 750-51.

4 District courts have adopted a default rule of applying  
5 judicial estoppel in matters involving bankruptcy given the  
6 critical importance of full disclosure in those proceedings: "If  
7 a plaintiff-debtor omits a pending (or soon-to-be-filed) lawsuit  
8 from the bankruptcy schedules and obtains a discharge (or plan  
9 confirmation), judicial estoppel bars the action." Ah Quin v.  
10 Cnty. of Kauai Dep't of Transp., 733 F.3d 267, 271, 273-74 (9th  
11 Cir. 2013) (citing In re Coastal Plains, Inc., 179 F.3d 197, 208  
12 (5th Cir. 1999)). However, despite the default rule,  
13 "[j]udicial estoppel is a discretionary doctrine, applied on a  
14 case-by-case basis." Id. at 272 (citing New Hampshire, 532 U.S.  
15 at 751). Upon closer review of Ah Quin and the cases relied  
16 upon to articulate this default rule, the Court finds that the  
17 rule should not be applied here given that the undisclosed claim  
18 was neither pending nor soon-to-be-filed as of the commencement  
19 of the bankruptcy action but rather did not exist until five  
20 years after the chapter 13 plan was confirmed. RJN No. 5; SUF  
21 Nos. 12.

22 Turning to the three New Hampshire factors, even if  
23 Defendant's SUF establishes the first two, Defendant has not  
24 shown Plaintiff obtained an unfair advantage, or that an  
25 opposing party was unfairly disadvantaged, when she failed to  
26 disclose the VA Claim on October 6, 2021. Defendant asserts  
27 Plaintiff received an unfair advantage when she obtained a  
28 "discharge without allowing the creditors to learn of the

1 pending lawsuit.” Mot. at 5. However, Defendant’s authority  
2 does not support that a lack of knowledge amounts to an unfair  
3 advantage. Rather, the unfair advantage exists in these  
4 circumstances only if the already-confirmed plan could be  
5 modified to allow the creditors to receive greater payments  
6 under the plan. Thus, Defendant must show that the already-  
7 confirmed chapter 13 plan could have been modified on or after  
8 October 6, 2021. Defendant has not made this showing.

9 A chapter 13 bankruptcy plan may be modified after  
10 confirmation but before completion of plan payments. 11 U.S.C. §  
11 1329(a); In re Flores, 735 F.3d 855, 859 (9th Cir. 2013) (en  
12 banc). Payments under a chapter 13 plan cannot exceed five years  
13 from the date the first payment is due, whether or not the plan  
14 is later modified after confirmation. 11 U.S.C. §§ 1322(d),  
15 1325(b)(4), 1329(c); In re Mrdutt, 600 B.R. 72, 83 (B.A.P. 9th  
16 Cir. 2019). The first payment is due 30 days after the chapter  
17 13 bankruptcy petition is filed, unless otherwise ordered by the  
18 bankruptcy court. 11 U.S.C. § 1326(a); In re Mrdutt, 600 B.R. at  
19 83; In re Profit, 283 B.R. 567, 575 (B.A.P. 9th Cir. 2002).

20 Here, Plaintiff filed her chapter 13 petition on June 20,  
21 2016, SUF No. 5, making the first payment due 30 days later on  
22 July 20, 2016. 11 U.S.C. § 1326(a). More than five years had  
23 passed by the time Plaintiff filed the VA Claim on October 6,  
24 2021. At that point, Plaintiff completed her payments under the  
25 plan, Opp’n at 4, and the plan could no longer be modified. 11  
26 U.S.C. § 1329(a).

27 In deciding Defendant’s summary judgment motion, the Court  
28 is required to draw all reasonable inferences in Plaintiff’s

1 favor. In re Oracle Corp. Sec. Litig., 627 F.3d at 387 (citing  
2 Anderson, 477 U.S. at 255). Doing so, the Court finds Defendant  
3 has not demonstrated that the already confirmed chapter 13 plan  
4 could have been modified such that Plaintiff obtained an unfair  
5 advantage by failing to disclose the VA Claim on October 6, 2021.  
6 Accordingly, the Court finds the balance of equities are not  
7 firmly tipped in Defendant's favor and Plaintiff is not  
8 judicially estopped from bringing her claims in this case.

9 2. Defendant fails to show Plaintiff lacks  
10 prudential standing to maintain this action.

11 Defendant next argues the VA Claim was and remains property  
12 of the bankruptcy estate because Plaintiff failed to disclose  
13 this claim during her chapter 13 bankruptcy. Mot. at 2, 7-8.  
14 If a debtor fails to disclose property belonging to the  
15 bankruptcy estate, that property does not revert to the debtor  
16 but remains with the bankruptcy estate. See 11 U.S.C. § 554(d);  
17 Cusano v. Klein, 264 F.3d 936, 945-46 (9th Cir. 2001). As a  
18 result, Defendant contends the bankruptcy trustee is the only  
19 real party in interest, and Plaintiff cannot maintain this  
20 action under Rule 17(a) of the Federal Rules of Civil Procedure  
21 ("An action must be prosecuted in the name of the real party in  
22 interest."). Mot. at 2, 7-8.

23 Defendant claims the VA Claim was property of the  
24 bankruptcy estate under 11 U.S.C. section 541(a)(1). Mot. at 7-  
25 8. Under section 541(a)(1), anything of value, including causes  
26 of action, that belong to the debtor at the commencement of the  
27 bankruptcy case are property of the bankruptcy estate. 11  
28 U.S.C. § 541(a)(1); Gladstone v. U.S. Bancorp, 811 F.3d 1133,



1 1139 (9th Cir. 2016); Cusano, 264 F.3d at 945-46. State law  
2 determines when a cause of action accrues for purposes of  
3 defining the scope of the bankruptcy estate. Cusano, 264 F.3d  
4 at 947. Under California law, a claim accrues "when the cause  
5 of action is complete with all of its elements." Norgart v.  
6 Upjohn Co., 21 Cal.4th 383, 397 (1999). Defendant elected to  
7 use the date Plaintiff filed the VA Claim, i.e., October 6,  
8 2021, as a proxy for date of accrual, even though the claim, or  
9 part of the claim, may have accrued earlier. SUF No. 12. Based  
10 on Defendant's undisputed facts, the Court finds the VA Claim  
11 did not accrue at any other time but October 6, 2021—over five  
12 years after Plaintiff filed her bankruptcy petition.

13 Accordingly, the VA Claim was not property of the  
14 bankruptcy estate under section 541(a) because it did not exist  
15 "as of the commencement of the case." 11 U.S.C. § 541(a)(1).  
16 Defendant's own authority similarly limits the scope of the  
17 bankruptcy estate under section 541(a) to prepetition causes of  
18 action. See Cusano, 264 F.3d at 948 (holding the debtor lacks  
19 standing for undisclosed claims accruing prepetition but retains  
20 standing for undisclosed claims accruing postpetition); Runaj v.  
21 Wells Fargo Bank, 667 F. Supp. 2d. 1199, 1206 (S.D. Cal. 2009)  
22 (holding prepetition causes of action to be property of the  
23 bankruptcy estate); Griffin v. Allstate Ins. Co., 920 F. Supp.  
24 127, 130 (C.D. Cal. 1996) (same).

25 Defendant's reliance on Moralez v. Vilsack, No.  
26 116CV00282AWIBAM, 2017 WL 4652730 (E.D. Cal. Oct. 17, 2017) in  
27 support of its argument is misplaced. Mot. at 2, 8. Although  
28 the District Court in Moralez held the bankruptcy estate

1 included postpetition claims, that holding was reached on  
2 grounds not raised here in Defendant's motion or reply. See  
3 Moralez, 2017 WL 4652730 at \*5 (finding the bankruptcy estate in  
4 a chapter 12 bankruptcy included postpetition property under 11  
5 U.S.C. section 1207). Moreover, Moralez involved a chapter 12  
6 rather than chapter 13 bankruptcy proceeding. See id. Even if  
7 the Court were to consider the holding in Moralez, its  
8 persuasiveness is undermined by other authority relied upon by  
9 Defendant. See In re Berkley, 613 B.R. 547, 552-53 (B.A.P. 9th  
10 Cir. 2020) (holding a chapter 13 bankruptcy estate does not  
11 include postconfirmation property).

12 In sum, Defendant has failed to show that the VA Claim was  
13 property of the bankruptcy estate under section 541(a). Absent  
14 this showing, Defendant cannot establish Plaintiff's  
15 nondisclosure affected her status as the real party in interest.  
16 Whether the VA Claim is considered community property, Reply,  
17 ECF No. 41 at 2-4, is inconsequential because it nevertheless  
18 did not exist at the commencement of the case. 11 U.S.C. §  
19 541(a).

20 IV. ORDER

21 For the reasons set forth above, the Court DENIES  
22 Defendant's motion for summary judgment.

23 IT IS SO ORDERED.

24 Dated: October 27, 2023

25  
26   
27 JOHN A. MENDEZ  
28 SENIOR UNITED STATES DISTRICT JUDGE